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Translating Right into a Reality: An Overview of Laws Related to School Education

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Universalisation of School Education Series

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Introduction

The 1990s have been a time of crisis driven changes in education which have continued into the new millennium. Many governments not only in developing countries have been struggling with debts pressure, budget deficits and falling revenue. Consequently, a great deal of effort has been expended to seek other than governmental funding for education. The implications of this shift for governmental human rights obligations in education have created a great deal of concern. Blue prints for educational reform have become a frequent agenda item at all levels of governance, from global to local. The turn of the millennium made obsolete many strategies which had by the year 2000 in their titles. These had promised both Primary education and Primary health care but neither materialized. The 21 century thus, began against the failure to translate promise into performance, to secure at least primary education free of charge for all children¹.

In our country Universalisation of School Education (USE)² is a Constitutional mandate and commitment. Universalisation implies providing free and compulsory education to all children up to the age of fourteen³ years. Over the years, efforts are being made by the Central and State Governments towards achieving the goal of universalisation of school education. Despite of all these efforts the goal remains elusive. All these years the focus was more on the quantitative expansion of school education to masses. A very little has been done to consolidate the expansion in order to emphasis on the qualitative aspect. Today the context of USE has undergone many changes. The Constitutional (93rd amendment) bill to make education a fundamental right has been passed in both the houses of parliament. Process of formulating the skeletal Central legislation in order to give effect to the Constitutional amendment is on. Centre for Child and the Law⁴ is part

¹ Tomasevski Katarina(2001),Free and Compulsory education for all children :the gap between promise and performance .Gothenburg at pp 8

² USE is a new Acronym, which stands for Universalization of School Education coined by the center to overcome the ambiguity prevailing in the area of school education. Many phrases like Elementary, Primary, Compulsory Primary, etc.,are being used in the context of USE. In India, the constitution guarantees free and compulsory education to all children until the age 14 years and this coincides with VIII standard in the present ladder of education (10+2+3). On the other hand, the CRC defines the Child as a human being below the age of 18 years. If we go by this norm, the State has to provide free and compulsory education to all children until the age of 18 years. In the present situation eight years of school education is inadequate and goes against the international standards ratified by the country from time to time. The eight years of school education norm was fixed at the time of adopting our Constitution when the socio economic conditions were different. Now we are in the competitive age of globalization, Liberalization and Privatization. The new situation compels the state to provide minimum ten years of school education (Completion of X standard) to all children. Therefore, to overcome all confusions prevailing and for clarity we have coined a new phrase Universalization of School Education (USE). USE means free, compulsory and equitable quality education to all children till they complete standard X.

³ All children were assured of free and compulsory education until the age fourteen years in the article 45 under directive principle within ten years from the commencement of the constitution.

⁴ One of the specialized Centres at the National Law School of India University working on issues related to children. Currently the Centre is engaged on the issues related to Juvenile Justice, Child Labour, and Universalisation of School Education, Conflict and children and Children affected by Communalism.

of the drafting committee. It is in this backdrop a basic question is being raised by all concerned people who have been working to realize the goal of universalisation of school education. However, the question is that how do we frame a skeletal Central legislation in order to ensure free, compulsory and equitable quality education to all children. It is equally important to reflect about the contents and structure of proposed central legislation. In this context, a cursory look of all laws pertaining to school education is of immense significance. This implies, a comparative analysis of international laws related to compulsory primary education along with the Constitutional provisions of India followed by a few important case laws.

Background

There is a new mood sweeping the country to demand equitable quality education for millions of the less privileged children of our society. This new development is indeed a very special and valuable one and must be taken on its high tide in order to achieve best results for those in critical need of the same. A more careful examination of this demand reveals to us that it means different things to different sections of the Indian population.

A substantial section of our people already has more or less adequate access, not only to school education but even to college education. At the same time there are very large sections of our population who do not have this benefit. Those, whose children are denied effective access to schools, are by and large the same as those who are poor and marginalized. To be more specific it is those below the poverty line, those belonging to the scheduled castes and the scheduled tribes, the poorer among the other backward castes, some sections of the minorities-especially the poorer Muslims, the ruined artisans, those belonging to the informal sector and the like, who are denied effective access to school education.

While reflecting on education we must recognize that there have been quite a lot of achievements on the education front both at the national and in our own State. Some of these we have already recognized. In addition we must recognize that the overall objective of providing a school⁵ within a reasonable walking distance of every child in every village is almost achieved. In other words a large number of Government run primary and secondary schools have already been set up across the length and breadth of the State. But the challenge is to make these schools as functioning schools. Very often these schools have only one or two teachers, not enough class rooms, no drinking water, no toilets, and above all no real education going on. It is in this context that many campaigns have now started concentrating on making these schools function and quite a few have achieved remarkable success.

Many important developments during the recent period have contributed to the overall climate in which civil society has been demanding for the right to education to be made a fundamental right. Among these developments we must particularly take note of the

⁵ However, the problem basic infrastructure, teaching learning materials, short fall of teachers', uninteresting contents and boring pedagogy continues to be the major problems of government school in the country.

debate in the country relating to child labour. There are varying perceptions about the concept and different manifestations of Child Labour. Lakshmidhar Mishra⁶ has identified three clearly visible schools of thought pertaining to the issue. The first school of thought treats education as a matter of the fundamental human right of every child. According to them, the State is the agent of society and it is the primary responsibility of the State to create necessary infrastructure for facilitating free, compulsory and universal access to primary education. All children of the school going age who are out of school should be presumed to be doing some form of work or the other. It is immaterial whether the job is hazardous or non hazardous as the distinction between the two is a thin and artificial one and the concept of childhood does not fit into the world of work. The second school of thought advocates a gradual, sequential and selective approach to the entire issue of school children vis-à-vis working children. According to the votaries of this school of thought one should concentrate first on those children employed in hazardous occupation followed by children working in non-hazardous occupations. This school of thought is also of the opinion that employment of children in hazardous work is to be prohibited and employment in non-hazardous work is to be regulated by fixing hours of work, wages, overtime, method of payment, provision of welfare facilities etc.. There is yet another, third school of thought which feels that both civil society as well as the State as the agent of society have miserably failed in making education a matter of fundamental human right and there by creating necessary infrastructure and environment, providing incentives to poor children in general and girl children in particular for ensuring access to educational opportunity and creating a conducive school environment which will make possible universal access, retention and participation of children in the schooling process. They, therefore advocate a point of view which is against both the first and second schools of thought and would like to leave the matter to the option to the discretion of children themselves. From the days when there used to be a lot of hair splitting controversy on whether child labor should be totally banned or whether only the most hazardous variety banned and the others regulated, we have now reached a stage where there is a lot of consensus that compulsory schooling is indeed a very important strategy to combat child labour. Yet another very important contributing factor to the desire to make education a fundamental right is the far-reaching decision of the Supreme Court in Unnikrishnan's case. It is in this context an attempt is made to trace the legal frame work related to school education both at the International and National level along with a few case laws.

⁶ Mishra Lakshmidhar, "Three Approaches to Child Labour", in Child Labour Law-An overview, V.V.Giri National Labour Institute NOIDA

Section –I

International Laws Related to School Education

International community has voiced its concern for compulsory education and literacy and this is evidenced through the numerous Conventions and Declarations adopted by various international bodies over time. As a result, one of the major issues in the 20th century has been the relentless struggle by international communities to persuade countries to observe human rights and the provision of basic needs. The equal rights and inherent human dignity of women, men, and children are enshrined in the Charter of the United Nations in general and in the Universal Declaration of Human Rights in particular. Education has been considered one of the basic rights and needs. Countries which are members of the United Nations (UN) are expected to ratify and domesticate international conventions into their national development policies. It is indeed a little surprising that something like literacy is considered as essential as food, water and shelter, that it is as basic a need as those needs that make life qualitative. Literacy is not the end of education¹. Literacy is only one aspect of education. Education is seen as a source of human development, as a means by which the masses become more aware and therefore empowered.

Education as a right was first explicitly recognized in the Universal declaration of Human Rights, 1948². It did not limit education to children only but believed that it existed as a right for all. However, it did state that elementary education be made compulsory for all children. Parents were seen as an integral part of the child's education for they could contribute to it and direct it appropriately. They were therefore to act in the "best interests" of the child³.

The Declaration on the Rights of the Child 1959⁴ narrowed the concept of education for all to the right of a child to education. It stressed on the obligation of the State to provide free and compulsory education to children at least at the elementary stages. Successive Conventions stressed on the importance of education for a child therefore narrowing the ambit of the right. Article 13 of the International Covenant on Economic, Social and Cultural Rights, 1966 states that education is one of the wisest investments that a State can make for its benefits are long term and continuing⁵.

¹ Saini Shiv Kumar, Development of Education in India –Socio Economic and political Perspectives, Cosmo Publications ,New Delhi ,1980 ,p.7." Gandhi believed that education should not be confined to literacy for the purpose of education is far more important than that. He believed that his concept of basic education, teaching children craft along with more formal studies made education more relevant to the needs of the child and gave it a sense of purpose"

² See Article 26 of Universal Declaration of Human Rights

³ Mehendale Archana, "Right to Elementary Education: Rhetoric or Reality?" Centre for the Child an the Law, National Law School of India University, 1998, p. 4.

⁴ See principle 7 of Declaration of the Rights of the Child

⁵ Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and

The United Nation Convention on the Rights of the Child, 1989 defines a child as anyone below the age of 18 years⁶. It recognizes that the right to education can be achieved progressively. It urges States to provide free and compulsory primary education to all. It stresses on the importance of vocational training at the secondary level and on reducing drop-out rates in schools⁷. With a view to regulate discipline in school it states that discipline which is enforced shall not violate a child's human dignity. The aim of education is to cultivate a sense of belonging to one's community and develop respect and a sense of pride for one's parents, community and country⁸.

The focus shifted from children to the education for all with the World Declaration on Education for All in 1990 at Jomtein, which also happened to be the International Literacy Year. The Declaration urged the core sponsors (UNDP, UNESCO, UNICEF and the World Bank) to concentrate their support in certain areas such as universal primary education to poorer countries so that the same is achieved on a time table basis. The Declaration stresses on the fact that this support should be on a long term and case-by-case basis. These agencies are to design programs that would eliminate social and cultural barriers that have discouraged women and children from seeking the benefits of education. Box I gives an overview provisions relevant to free and compulsory education.

democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence. Comment on Article 13 by the Committee on Economic Social and Cultural Rights.

⁶ Article 1

⁷ Article 38

⁸ Article 29

economic conditions were different .Now we are in the competitive age of Globalization, Liberalization and Privatization .The new situation compels the state to provide minimum ten years of school education (Completion of X standard) to all children .Therefore to over come all confusions prevailing and for clarity we have coined a new phrase Universalization of School Education (USE). USE means free, compulsory and equitable quality education to all children till they complete standard X.

The next major policy formulation was the National Policy Education (NPE) in 1986. The NPE repeated the commitment of providing education to all children until the age of fourteen years. It mainly emphasized on the consolidation of education process to ensure The fruits of the socio economic change reach all sections of the society. Above all the policy fixed the target years for ensuring universalisation .It clearly said that It shall be ensured that all children who attain the age of about 11 years by 1990 will have had five years of schooling, or its equivalent through the non formal stream¹⁰ .Like wise, by 1995 all children will be provided free and compulsory education up to 14 years of age.

The Constitutional commitment of providing free and compulsory education was fully buried after India attended the World Conference on Education for All (EFA) organized by the World Bank and number of international agencies including the United Nation agencies at Jomtein (Thailand).The conference issued a ‘world declaration on education for all ‘and a’ Framework for action to meet basic learning needs’. The interesting thing is that neither of these documents mentioned any thing concrete about number of years of schooling .Instead, the world declaration defined Basic Learning Needs essentially in terms of five years of primary schooling.

The World Bank dictated World Declaration on Education for All seems to dismantle all our earlier policy formulations and commitment to provide education until the age of fourteen years and even reduce it further by talking of “primary schooling” which in fact will get over at the age of eleven. One could see the immediate impact of this World Bank dictated policy on the National Policy on Education which was modified in 1992.

The Indian government started talking about universalisation of primary education instead of elementary education and started formulating programmes and strategies for only five years of school education .Launching of Education for All (EFA) and District Primary Education Programme (DPEP) are the clear indication of moving away from the Constitutional scheme, which itself needs further expansion to meet the needs of modern competitive economics.

There after, a new phase has started in India education which paved way for international funding for Primary education. For instance in India the World Bank and the Government of India came together in a collaboration to improve standards of elementary education in India. The Bank set up the Ongoing World Bank-Assisted Education Operations¹¹ . There

¹⁰ The proposal to provide non formal education in the place of formal education was opposed by many progressive teachers and student unions on the grounds that it promotes class society in which formal education to those have every thing and non formal education to those who have nothing.

¹¹ <http://www.worldbank.org/html/extdr/offrep/sas/saseduc.htm>.

were five ongoing projects with the Ministry of Human Resources Development, three primary and two technician education projects-and one vocational training project with the Ministry of Labour¹².

The first project was the Utter Pradesh primary Education project financed at \$165 million. 1 million girl children were to benefit from this program. Related to this was the District Primary Education Project (DPEP), approved in November 1994, financed at a sum of US\$180 million. It supports the Government of India's District Primary Education Program to build national, state, and district managerial and professional capacity to develop sustainable primary education. It supports district-based programs to decrease dropout, increase learning achievement, and improve access to primary education. The project emphasizes increased access for female, scheduled caste, and scheduled tribe students. The third project was to extend DPEP into 60 new districts of Utter Pradesh. This was at a cost of \$425.1 million. The project finances the creation of approximately 852,000 new primary school places each year.

The Vocational Training Project was at a cost of \$210 million and about 550 industrial training institutes in 28 states/union territories and 20 centrally administered institutions were financed under the project.

The other international institution that funds Indian development projects is the UNICEF. India is only second to China in receiving funds from the UNICEF¹³. UNICEF also coordinates with NGO have and provide them monitory assistance for short programs and specific activities. Among the NGO's funded by the UNICEF is the M.V Foundation in Hyderabad¹⁴.

When the discussion on providing Primary education to all children was at its peak at the international scenario, the Indian judiciary gave an historical judgment which has provide fundamental right status to elementary education. Educations Commissions since independence have stressed on the need to implement universal elementary education. But none suggested that education be translated as a fundamental right rather than remaining as a Directive Principle, which in any case was not enforceable. Had education been a fundamental right then the State would have been under a legal obligation to provide the same. Since the Government was neglecting education; it was left to another body to articulate this pressing need. This is where the Supreme Court seized the opportunity and declared that education was a fundamental right flowing from Article 21 of the Constitution which will be discussed in the forth coming section. Box II gives an overview of important provisions relevant to education in the Indian Constitution.

¹² It's focus its assistance for education exclusively at the level of basic education, with a special focus on girls, scheduled castes, scheduled tribes, and working children. It will also emphasize Enrollment, retention, and raising students' learning achievement

¹³ UNICEF funds almost \$80 million for activities related to women and children. On a region wide distribution, Delhi based activities receive 25%, the nine poorest states receive 50% and the remaining states receive 25%.

¹⁴ See, www.unesco.org for an interview with Dr. Balaji who is Chief- Strategic Planning, Monitoring and Evaluation, UNICEF. The organization also assists around 200 NGO's.

Box I: Key provisions of various International treaties/conventions on free and compulsory primary education

Universal Declaration of Human Rights (1948)

Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory

Declaration of the Rights of the Child (1959)

The Child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages

UNESCO Convention against Discrimination in education (1960)

The Parties to this Convention undertake to formulate, develop and apply a national policy which, ... will tend to promote equality of opportunities and of treatment ...
And in particular: (a) To make primary education free and compulsory

International Covenant on Economic, Social and Cultural Rights (1966)

Primary Education shall be compulsory and available free to all

Convention on the rights of the Child (1989)

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make Primary Education Compulsory and available free for all

Section –II

National Legal Framework

India has a long tradition of education both through formally organized institutions as well as less formal ones like hermitages or 'ashrams' where pupils were under the complete custodial care of their Gurus. A mass education movement, however, began during the age of Jainism and Buddhism when a widespread attempt was made to use the people's spoken language to impart education related to the needs of people. The mass education movement further gained impetus during India's freedom struggle for Independence. Leaders at the forefront of the freedom struggle wanted to further these sentiments and therefore the idea for a National Education gained strength¹.

The Maharaja of Baroda who introduced compulsory education in some parts of his princely state in as early as 1893 nonetheless took the first initiative. The experiment proved successful and he introduced compulsory primary education throughout the state of Baroda² in 1906. The first national leader to moot the idea of introducing universal elementary education in India was Gopal Krishna Gokhale. He was of the opinion that the only way to realize the dream of universal education was to make it compulsory³. He also introduced a fairly revolutionary idea in education by stating that compulsion would only be effective if the education was being provided free of cost. His idea was rejected on administrative and financial grounds.

In 1910, Gopal Krishna Gokhale moved a resolution in the Imperial Legislative Council that "a beginning be made in the direction of making elementary education free and compulsory throughout the country", which was opposed by the official side, A Bill to that effect moved by Gokhale on March 16, 1911 was thrown out.

In 1917, Vithalbhai Patel was responsible for getting the first Law on Compulsory Primary Education in India passed by the Bombay Legislative Council. By 1930, every Province of British India had a law on primary education. But among the princely States, Baroda was the first to pass an Act for compulsory education of boys from age 7 - 12 and girls from age 7 - 10, in 1906.

In 1919 the colonial government entrusted the education portfolio in the provincial states to the Indian ministers in the Diarchy Government. Vallabhai Patel then an ardent

¹ Pursuant to the idea of promoting national education the National Education Council was set up in Calcutta. A National College was also established that later became the Jadavpur University.

² Kuppaswamy B., *Social Change in India*, Vikas Publication, New Delhi, 1973, p. 232.

³ *Ibid.* The compulsory education pertained to children between the ages of 6 to 10 years of age. The compulsory element was to be introduced after one third of the boys between the ages of 6 to 10 years of age were enrolled. One can only guess the motive for such an introduction. One third of the population in the relevant age group probably represented a sufficiently large number of the populace that saw education as a necessity. It represented a sort of consensus for the idea of universal education. Therefore if a substantial portion of the population endorsed this view then it implicitly means that universal education would be just as important for the rest of the nation.

nationalist introduced the concept of allowing municipal areas to introduce compulsory education with a grant from states. While some states implemented compulsory education laws many did not⁴. This was because local authorities did not want to prosecute parents or guardians by being over zealous and usually tried to persuade the parents to send children to school rather than punish them for a default.

The introduction of Provincial Autonomy in 1937 through the Government of India Act, 1935, gave more powers to Indian Ministers to act independently. Though detailed plans for large scale expansion of elementary education were developed, the implementation was restricted because of the outbreak of the Second World War. For overcoming the constraints of funds at the disposal of Congress Ministers, Mahatma Gandhi suggested that the plans of mass education need not be held up and that universal, compulsory and free primary education of seven years' duration could be given to every child if the process of schooling could be made self-supporting. With this object in view, Gandhiji formulated the scheme of 'Basic Education' which was discussed and endorsed by the first Conference of National Education held at Wardha in October, 1937 which resolved that free and compulsory education be provided for seven years on a nation-wide scale, the medium of instruction be the mother-tongue, and the process of education during this period should centre around some form of manual productive work. This scheme was adopted in several provinces where the Congress was in power.

Consequent upon the continued efforts of the leaders, the provision, of free and compulsory education to all children till they reached the age of 14 years, was nationally accepted during the early 1940s as the responsibility of the State. The Post-War Plan of Educational Development in India (1944) popularly known as the Sargent Plan, recommended the provision of free and compulsory education to all children in the age group of 6 - 14 years in a phased programme spread over a period of 40 years. However, the national leadership was determined to telescope the process and a Committee under the Chairmanship of B.G. Kher recommended that the goal should be achieved by 1960. It was this recommendation that formed the basis of Article 45 of the Directive Principles of the Indian Constitution.

During the debates in the Constituent Assembly on the draft constitution, Article 36 (Corresponding to the present Article 45) relating to elementary education was under discussion. Article 36 reads as follows “ Every citizen is entitled to free primary education and the state shall endeavor to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until the complete the age of fourteen years “

There were two amendment proposed. A member (Pandit Laksmi Kanta Maitra :West Bengal) proposed that the reference to free primary education be deleted so that it does not contradict the reference to until they complete the age of fourteen years. Another member (Naziruddin Ahmad: West Bengal) contended that, in view of the expected

⁴ In 1921-22 education was made compulsory in eight towns and not a single village and by 1936-37 it was made compulsory in 167 out of 2,700 urban areas and a handful of rural areas.

resource crunch the reference to the age of fourteen years be reduced to the age of ten years and the commitment of the state be limited to only primary education .

Dr.B.R.Ambedkar responded to these proposals saying “ I accept the amendment proposed by my friend ,Mr.Maitra which suggest the deletion of the words Every citizen entitled to free primary education and .But ,I am not prepared to accept the amendment of my friend ,Mr. Naziruddin Ahmad. He seems to think that the objective of the rest of the clause in Article 36 is restricted to free primary education. But, that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of fourteen years If my honorable friend, Mr.Naziruddin Ahmad had referred to Article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in Article 18 to forbid any child being employed below the age of 14.Obviously ,if the child is not to be employed below the age of 14 ,the child must be kept occupied in some educational institution .That is the object of the Article 36 and that is why I say the word primary is quite inappropriate in the particular clause ,and I therefore oppose his amendment “. Finally a consensus in the Constituent assembly led to the present Article 45 of the Constitution.” Article 45 states that

“The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”.

In addition to Article 45 was Article 41, which stated that the State within its economic capacity was to make effective provisions for education⁵. Later Education was incorporated in the Concurrent List, with the aim that it would enable both the State and Centre to contribute effectively to education.

In spite of the continued dialogues on education in the post -independence period, no governments both at the centre as well as at the states did take adequate measures to achieve the goal enshrined in the Constitution. The ten years Constitutional mandate to provide free and compulsory education to all children ended in 1960 without achieving much progress in the area of literacy.⁶ Later in 1964 the Education Commission was appointed by the Government of India to advise the government on the national pattern of education and on the general principles and policies for the development of education. While writing the report, the commission in its opening statement had observed that “The destiny of India is now being shaped in her classrooms. This, we, believe, is no mere rhetoric. In a world based on science and technology, it is education that determines the level of prosperity, welfare and security of the people .On the quality and number of persons coming out of our schools and colleges will depend our success in the great enterprise of national reconstruction the principal objective of which is to raise the

⁵ Also see Article 15 on Prohibition of Discrimination on grounds of religion, race, caste, sex or place of birth. By virtue of sub clause 3 any special provision for women and children was not to be considered discriminatory.

⁶ As per the statistics the literacy rate was 18.33 percent in 1951.It has been increased to 28.31 percent in 1961.The percentage of increase was less than 10 percent in 10 years

standard of living of our people.⁷

The first National Policy on Education in 1968 based on the comprehensive report of the Kothari Commission made an unambiguous commitment to implement the Constitutional mandate. The policy says "strenuous efforts should be made for the early fulfillment of the Directive Principle under Article 45 of the constitution seeking to provide free and compulsory education for all children up to the age of 14. This Policy emphasized that a Suitable programme should be developed to reduce the wastage and stagnation in schools and to ensure that every child who is enrolled in school successfully completes the prescribed course.

Later the National Policy on education, 1986, repeated the commitment to provide education to all children until they complete fourteen years of age. The policy resolved that "The new education policy will give the highest priority to solve the problem of children dropping out of school and will adopt an array of meticulously formulated strategies based on micro planning. The same will be applied to the grassroots level all over the country, to ensure children retention in school. This effort will be fully coordinated with the network of non formal education. It shall be ensured that all children who attain the age of about 11 years by 1990 will have had five years of schooling, or its equivalent through the Non-formal stream. Like wise, by 1995 all children will be provided free and compulsory education up to 14 years of age.

After this resolve, India participated in the world conference on Education for All (EFA) organized by the World Bank and a number of international agencies including the United Nations agencies. The Conference held at Jomtein (Thailand) issued a "World declaration on education for all" and a "Framework for action to meet basic learning needs".

A careful analysis and observation of chronological events right from the Constituent Assembly debates to the present day reveals interesting facts. We began by relying on international resource mobilization and now we are gradually shifting to foreign aid. Evolution in our policies relating to education is closely connected with this shift in the source of resources relied upon.

To begin with, the debates in the Constituent Assembly on the proposed Article 36 pertaining to free and compulsory raised many questions about the contents of the Article 36. One of the main concerns raised by the members was to reduce elementary education (eight years of school education) to primary education (five years of school education) under the guise of resource crunch on the States. The proposal was rejected by Dr. Ambedkar on the grounds it goes against one of the fundamental rights which prohibits employment of children below the age of fourteen. The commitment to provide free and compulsory education to all children until the age of 14 is not just a theoretical decision but a by product of our freedom struggle. The freedom struggle assured many things to people one among which was education. One could see this reflection among

⁷ Education and National Development – Report of the Education Commission 1964-66, NCERT, New Delhi, 1970, pp 1

those stalwarts who had internalized the values of the freedom struggle. All their actions were inspired and guided by that spirit. For instance Gopal Krishna Gokale moved a motion in the Central Assembly to demand universalisation of education. As I mentioned earlier, Dr. Ambedkar rejected the proposal of reducing Elementary education in to Primary education.

The commitment to provide education to the masses in general and to all children until the age of fourteen years in particular continued till the end of late 80s. The same was equivocally repeated in all our policy documents.

The first major educational policy⁸ document in the post independence era was made in 1968 as a consequence of the Kothari Commission Report. The commission strongly recommended to provide free and compulsory education to all children until the age of 14 years. It also made a far reaching consequence by recommending undifferentiated (General) curriculum for ten years of schooling. I want to emphasize this particular recommendation for the benefit of our political bosses and policy framers. The education commission had visualized the need and importance of providing minimum ten years of school education to all children. The restructuring of the school education system in 10+2+3 pattern is one of the visible outcomes of this policy which clearly emphasizes the need for ten years of school education. But unfortunately the present political leadership in nexus with the bureaucracy is making all efforts to delimit general school education up to the eighth standard only or until the age of fourteen years. The 86th amendment bill passed by both the houses of parliament⁹ to make education a fundamental right restricts this right to the age group of 6 to 14.

Our experience in the area of school education and simultaneously the objective realities on the ground compel us to find a suitable abbreviation in place of the existing one namely "Universalisation of Elementary Education", "Universalisation of Primary Education", "Education for All", "Sarva Shiksha Abhiyan" etc. In order to overcome ambiguity and lack of clarity, we at the centre have coined a new expression namely, Universalisation of School Education (USE) for popular use in the ongoing debate. The rationale for the new acronym is that in our country, the Constitution guarantees free and compulsory education to all children until the age of 14 years and this coincides with VIII standard in the present ladder of education (10+2+3). On the other hand, the CRC defines the Child as a human being below the age of 18 years. If we go by this norm, the State has to provide free and compulsory education to all children until the age of 18 years. In the present situation eight years of school education is inadequate and goes against the international standards ratified by the country from time to time. The eight years of school education norm was fixed at the time of adopting our constitution when Socio -

⁸ It is important and significant to note of that the independent India did not evolve any policy document for education nearly for about 21 years after independence. This very fact of not evolving a policy document for 21 years raises serious doubts about the political will of the National leadership on the issue of universalisation of elementary education.

⁹ According to the reliable sources though the bill has been passed by both the houses the present governments has not yet send the bill for the President assent. The speculations are that the government is worried about the financial implications. Why cannot we reduce our military expenditure to provide education to all our children is still a million dollar question?

Box II: Various provisions of Indian Constitution related to education

Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure all his citizens: **JUSTICE**, social, economic, and political; **LIBERTY** of thought, expression, belief faith and worship; **EQUALITY** of status and opportunity; and to promote among them all **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949,do HEREBY ADOPT ,ENACT AND GIVE TO OURSELVES THIS CONSTITUTION

Part III -Fundamental rights

Equality before law

Article 14

The State shall not deny to any person equality before law or the equal the protection of the laws within the territory of India.

Prohibition of discrimination on the grounds religion, race, caste, sex or place of birth

Article 15

(1)The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(3)Nothing in this article shall prevent the state from making any special provisions for women and children.

Protection of life and personal liberty

Article 21

No person shall be deprived of his life or personal liberty except according to procedure established in the law

Prohibition of traffic in human beings and forced labour

Article 23

(1)Traffic in human beings, begging and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Prohibition of employment of children in factories, etc

Article 24

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

Part IV- Directive principles

Certain principles of policies to be followed by the state

Article 39

The state shall, in particular , direct its policy towards securing:

(e) that the health and strength of workers , men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age of strength; and

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment.

Right to work, to education and to public assistance in certain cases.

Article 41

The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of employment, old age sickness and disablement, and in other cases of undeserved want

Provision for free and compulsory education

Article 45

The state shall endeavor to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education to all children until they complete the age of fourteen years.

Promotion of educational and economic interests of disadvantaged and other weaker section

Article 46

The state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

Education related provisions in the Union ,State and Concurrent List

List-I - Union List

62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

63. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the ¹⁵[Delhi University; the University established in pursuance of article 371E;] any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for -

- (a) Professional, vocational or technical training, including the training of police officers; or
- (b) The promotion of special studies or research; or
- (c) Scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

67. Ancient and historical monuments and records, and archaeological sites and remains, ¹⁶[declared by or under law made by Parliament] to be of national importance].

List-II - State List

12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those ¹⁷[declared by or under law made by Parliament] to be of national importance.

¹⁵ Subs. by the Constitution (Thirty-second Amendment) Act, 1973, Sec.4, for “Delhi University and” (w.e.f. 1-7-1974).

¹⁶ Subs. by the Constitution (Seventh Amendment) Act, 1956, sec.27, for “declared by Parliament by law”

¹⁷ Subs. by the Constitution (Seventh Amendment) Act, 1956, Sec.27, for “declared by Parliament by law”.

List-III - Concurrent List

25. ¹⁸[Education, including technical education, medical education and universities, subject to the provisions of entries 63,64,65 and 66 of List-I; vocational and technical training of labour].

26. Legal, medical and other professions.

¹⁸ Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.57, for entry 25 (w.e.f. 3-1-1977)

Section -III Judicial Pronouncements and After

Though the duty of the State to provide for universal elementary education is a Constitutional duty, very little has been done to make it into a reality. Part of the problem was that this duty was not enforceable against the state as it was a Directive Principle of State Policy and quite unlike a fundamental right which cast a binding legal obligation on the State to enforce it. Directive Principles are directory in nature and are conditions towards which States have to strive to achieve.

The movement to make elementary education compulsory and universal got a major thrust after the Supreme Court Judgment in the *Mohini Jain Case*¹. Mohini Jain was a student from Meerut who had applied to a private medical college in Karnataka. She was asked to pay a tuition fee of Rs 60,000 though students who were granted Government seats paid substantially lower. The Court knew that charging capitation fee, as tuition was becoming a menace in many colleges of the State. Private colleges were using their position to extract exorbitant amounts from prospective students. The Court was nonetheless in a bit of a quandary because technically private institutions were permitted to charge whatever fee they liked. The process of making private colleges accountable has resulted in some amount of judicial innovation and a broader interpretation of the concept of fundamental rights.

The Medical college fee structure was as follows: Certain seats were earmarked as government seats and the college charged a minimal amount of Rs 2,000. The other seats could be filled in as the college desired. In this particular college students from outside the State of Karnataka were charged Rs 60,000 and students from within the State were charged Rs 25,000. Clearly charging such disproportionate amount was discriminatory but the question was could a college be held liable for violation of a fundamental right on grounds of discrimination if it was not a state entity?

The Supreme Court went on to first state that Directive Principles could not be isolated from Fundamental rights under Part III of the Constitution. Directive Principles have to be read into Part III. Moreover if a right to education as under Article 41 was not given the colour of a fundamental right then other rights such as the right of freedom of speech and expression would be meaningless.

It held that the State was under a constitutional obligation to provide educational institutions at all levels for the benefit of all citizens and the opportunity to acquire education cannot therefore be confined to the richer sections of society. The State discharges this constitutional obligation through State owned or state recognized educational institutions. Therefore when the state grants recognition to private educational institutions, it creates an agency to fulfill its obligation under the Constitution. Students are therefore given admission to these institutions in recognition of their right to education. When the state permits a private educational institution to be set

¹ *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1859

up and recognizes its curriculum and degrees then the said college is performing a function that is originally placed on the State by the Constitution. Lawyers for the State tried to argue that discrimination on the fee structure was based on a valid criteria namely the state from where the student came. Government seats were meant for meritorious students whereas all other seats were meant for non-meritorious students.

The Court rejected this logic and stated that the fee was too disproportionate to be justified. It said that private colleges had no business admitting non-meritorious by charging them capitation fee as this went against the basic tenets of education².

This judgment gave the impetus to the movement that demanded education as a fundamental right and to those among it that believed that private institutions should come within the purview of fundamental rights.

It was left to a subsequent judgment, the *Unni Krishnan Case*³ to crystallize the position on this issue. The judgment clarified some of the postulates in the *Mohini Jain Case*.

Firstly, the *Mohini Jain* case had in essence stated that Article 41 was concomitant to Article 21 and therefore a fundamental right to education flowed from Article 21. Thus according to *Mohini Jain* there was a general right to education against the State. The Court in *Unni Krishnan* disagreed with this. The right to education flowed from right to life under article 21 but the right was circumscribed in light of the Directive principles, which made it an obligation on the State to provide education to all citizens up to the age of fourteen years⁴.

Secondly, *Mohini Jain* had held that private institutions were instrumentalities of the State because they were discharging State obligation. This logic was used to strike down at capitation fees. However *Unni Krishnan* held that a private institution couldn't become an instrumentality of the State merely by recognition or affiliation. Recognition and affiliation are for the purpose of conforming to certain standards of education and course of study, because if standards were not met degrees would not be granted. But this did not mean that they were absolved of all duty and could charge any amount of capitation fee they liked. Private institutions are not instrumentalities of the State and they can charge a higher tuition fee than government institutions. But on the other hand they perform a public duty and therefore deserve to act fairly. Therefore any unjustifiable or arbitrary tuition fee could not be condoned.

The Supreme Court has by virtue of these two judgments incorporated the right to

² This could have been a victory for Mohini Jain had it not been for the Court denying her any remedy firstly on the ground that since she was charged capitation fee she was not meritorious and therefore did not deserve to be admitted in the first place and secondly classes had already begun! Also See, Sathe S. P, "Supreme Court on the Right to Education", Economic and Political Weekly, August 29, 1992, p. 1847.

³ *Unni Krishnan v. State of Andhra Pradesh*, AIR 1993 SC 2179

⁴ Moreover the Court held that the finding that right to education is a fundamental right in *Mohini Jain* was obiter dicta and therefore not law, because the ratio of the case pertained to the liability of private educational institutions.

education as a fundamental right under Article 21 (right to life and personal liberty). On the issue of the force of law that these judgments have, it must be noted that under Article 141, the law declared by the Supreme Court is binding on all in the territory of India. These pronouncements therefore receive the status of law and can be enforced in any Court of law.

Since then many social movements across the state, NGOs and Individuals started pressurizing the government to make education a fundamental right by amending the Constitution. As a cumulative effect the then ruling united front government prepared the 83rd amendment to the constitution to make education a fundamental right and introduced the same in the Rajya Sabha in July 1997. It is in this scenario that the Saikia Committee was formed that came up with quite far reaching suggestions.

The Saikia Committee and the 83rd Amendment to the Constitution

After almost fifty years of Independence and countless Committees policy makers realized what it required to make universal elementary education a reality. What it required was not just allocation of resources and Centre State co-ordination, but a clear-cut mandate. India had failed in what most other countries had managed to achieve because there was no compulsion of any sort on the state machinery to actually effectuate something like elementary education. Though Centre State co-ordination had been occurring for years, India's masses remained illiterate because no agency could be hauled up for the dismal state of education. International Declarations had always stressed on the "compulsory" aspect of education, because they knew that unless people were forced to act nothing would result out of policy papers. Therefore in 1997 the Sakia Committee consisting of State Education Ministers came up with their suggestion of amending the Constitution to make elementary education a fundamental right. Their suggestions are as follows⁵:

They proposed to amend Article 21 of the Constitution to include another provision, Article 21A. It would read as follows:

- 1. The State shall provide Free and compulsory education to all citizens of the age six to fourteen years.*
- 2. The right to free and compulsory education as referred to in clause (1) shall be enforced in such manner as the state may by law determine.*
- 3. The State shall not make any law for free and compulsory education under clause (2), in relation to the educational institutions not maintained by the state or not receiving aid out of state funds.*

Present Article 35 would be re-numbered as sub-clause 1 and the following would be added after the Explanation:

- 2. The competent legislature shall make the law for the enforcement of the right to free*

⁵ The Constitution (Eighty-Third Amendment) Amendment Bill, 1997

and compulsory education referred to in clause (1) of Article 21A within one year from the commencement of the Constitution (eighty third amendment) Act, 1997.

Provided that a provision of any law to free and compulsory education in force in a State immediately before the commencement of the Constitution (eighty third amendment) Act, 1997 which is inconsistent with the provision of article 21A, shall continue to be in force until amended or repealed by competent legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.

It was suggested that Article 45 of the Constitution would be deleted as the directive Principle was now being made a fundamental right. But many groups opposed it and stated that Article 45 was necessary because Article 21A only pertained to children between the ages of 6 to 14 years. They were of the view Article 45 would nonetheless impose the duty on the State to provide education for children below the age of 6. The 1997 Amendment Bill omitted this age group because they felt that drawing up a curriculum for children at the pre-school stage was more complicated than deciding on a curriculum for school age going children.

Finally in Article 51A of the Constitution, after clause (j) the following clause was to be added:

(k) to provide opportunities for education to a child between the age of six and fourteen years of whom such citizen is a parent or guardian.

This cast an obligation on the parents or guardian as the case maybe to ensure that all children between the ages of 6 to 14 years did attend school. This would in effect penalize those parents who could keep their children from attending school and instead engage them in child labour.

Certain concerns were raised regarding the 1997 Bill. It was stated that with respect to Article 21A that framing of the law should not be left to the states to decide.

It was suggested that a Central law should be framed that would act as the model law on the basis of which States would frame their respective State legislation. Moreover private educational institutions should not be left out of the purview of the legation for they a public duty and it would amount to discrimination if they were not regulated as well. Moreover private educational institutions usually charge exorbitant fees and therefore this excludes many poor and economically backward children from availing the education imparted by these institutions.

Article 21A would thus read as follows⁶:

⁶ The Constitution (Eighty-Third Amendment) Amendment Bill, 1999

- *The State shall provide Free and compulsory education to all citizens of the age six to fourteen years.*
- *The obligation to provide free and compulsory education referred to in clause (1) shall be enforced by a Central legislation on the basis of which existing state legislation on the subject would be appropriately revised.*

Since the States would draft laws based on the Central legislation, it necessarily followed that all State laws repugnant to the central law would be struck down.

Article 45 would remain as it is because cast a duty on the State to provide for Pre-School educational institutions.

After four and a half years, the ruling NDA government at the center passed the 86th amendment bill (having renumbered the earlier 83rd and 93rd amendment bill) in the Lok Sabha on 28th December 2001 and subsequently Rajya Sabha passed it in May 2002 to make education a fundamental right and now a committee has been constituted to draft the Central legislation to operationalise the right to education.

The reason to mention both International and national declaration/conventions along with constitutional provisions and related case laws is to make it clear that the state can no longer ask excuse to take appropriate measures to provide free and compulsory quality education to all children.

Box III: Excerpts from the Case Laws

Right to Education (Article 21 and 45)

Miss. Mohini Jain v. State of Karnataka and others

AIR 1992 S. C. 1858.

"The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a Constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Art.41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate."

"Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Art.21 and the dignity of an individual are not be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facilities at all levels to its citizens.

The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Art.19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

The "right to education" therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society."

"We hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or State-recognized educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. The students are given admission to the educational institutions-- whether State owned or State-- recognized-- **in recognition of their** " right to education" under the Constitution."

Unnikrishnan, J.P. and other v. State of Andhra Pradesh and others
AIR 1993 S.C. 2178.

"The first question is whether the right to life guaranteed by Article 21 does not take in the right to education or not. It is then that the second question arises **whether the State** is taking away the right as at present does not mean that right to education is not included within the right to life. The content of the right is not determined by perception of threat. The content of right to life is not to be determined on the basis of existence or absence of threat of deprivation. The effect of holding that right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance, with the procedure

"In the above state of law, it would not be correct to contend that Mohini Jain (1992 AIR SCW 2100) was wrong in so far as it declared that "the right to education flows directly from right to life". But the question is what the content of this right is? How much and what level of education is necessary to make the life meaning full? Does it mean that every citizen of this country can call upon the State to provide him education of his choice? In other words, whether the citizens of this country can demand that the State provide adequate number, of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs? Mohini Jain seems to say, yes, with respect, we cannot agree with such a broad proposition. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it."

"The three Articles 41, 45, 46 and are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means

(a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and

(b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. We may deal with both these limbs separately".

"The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III we are merely relying upon Article 41 to illustrate the content of the right to **education flowing from Article 21. We cannot believe that**

any State would say **that it need** not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of

economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State.

In the light of the above enunciation, the apprehension expressed by the counsel for the petitioners that by reading the right to education into Article 21, this Court would be enabling each and every citizen of this country to approach the courts to compel the state to provide him such education as he chooses must be held to be unfounded. The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development". We must hasten to add that just because we have relied upon some of the directive principles to locate the parameters of the right to education implicit in Article 21, it does not follow automatically that each and every obligation referred to in Part IV gets automatically included within the purview of Article 21. We have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact, we have referred to Articles 41, 45 and 46 merely to determine the parameters of the said right".

Section-IV

Legislations of our Neighboring Countries

India's record with educating its children has been very disheartening. Most time authorities give admirable enrollment figures to prove that more children are attending school. Government statistics do not distinguish between enrollment and attendance because the problem really arises in retaining children in school. If school authorities are reimbursed for enrollment statistics then they have an incentive to over-report. But the problem is that enrollment does not take into account those who drop out even before completing their primary education. Re-entry into the labour force is usually the reasons for this.

Of fourteen countries in the world with populations over 15 million and per capita income below \$500 India ranks ninth in literacy behind such States as SriLanka, Vietnam, Tanzania, China, Zaire, Burma, Kenya and Uganda. India Has a very poor survival or retention rate compared with other countries, many with lower per capita incomes¹. This suggests that poverty is not the reason that keeps Indian children out of school because poverty exists in most African countries and yet they have better literacy rates. The answer probably lies in other factors that ensure that children attend school.

China had a literacy rate of only 20% in 1949 but by 1982, 93% of all Chinese children attended primary school and 74% completed sixth grade. One can attribute this to the sustained and continuous commitment to education by the Communist party. The State has emphasized on a system of education that is common to all. Though schooling was made compulsory the State has relied heavily on the local self-governments to achieve its objective². Primary schools are largely financed by the local self-governments and urban schools largely by the central government. Teacher training is conducted at the local level but textbooks and curriculum are under central control³.

Education is regarded as a duty. A clear distinction was made between universal and compulsory education. The government has an obligation to the people to provide necessary conditions for implementing compulsory education. Necessary conditions include the construction of an adequate number of schools, providing books, sports equipment, food, clothing and training of teachers. There is also a duty on the parents to send their children to school. Where either the government or the parents fail they are charged with violation of the law⁴.

¹ See Weiner at p. 157.

² *Ibid* at p. 162

³ In China primary education is common to all with differences between urban and rural content of education. High School education on the other hand is highly differentiated.

⁴ See Article 19 of the Constitution of the People's Republic of China. Sub clause 2 states as follows: "*The state runs schools of Ovarious types, makes primary education universal and compulsory, develops secondary, vocational and higher education and promotes pre-school education*". Also see, sub clause 4 which states that, "*The State encourages the collective economic organizations, state enterprises and undertakings, and other social forces to set up educational institutions of various types in accordance with the law*". Article 46 ensures a right to education to its citizens while at the same time making them

China has also been successful in abolishing child labour. Local governments have assisted greatly in this endeavor. Establishments hiring child labour have been severely penalized.

Though education is compulsory, the law is such that municipalities and provinces can set their own pace. While urban centers have implemented the law straight away, some provinces have done so in a phased manner. But Central law requires that children in each locality receive a certain minimum years of compulsory education. The government has also put in a concerted effort to ensure that literacy among girl children is raised.

South Korea on the other hand is an example of a nation with committed policies to education in spite of having inherited an education system in shambles from the Japanese. The Japanese took over Korea in 1910. They introduced a dual system of education, one for Japanese immigrants to Korea and the other for Koreans. The former was elitist with Japanese as the medium of instruction and teachers from Japan. Koreans rarely attended these government schools in spite of free lunches and textbooks. Most children were sent to private schools run by Christian missionaries. Korea got its independence from Japanese rule in 1945. The country was partitioned into North and South Korea. The former was under Soviet influence and the latter under U.S influence. Both countries education was emphasized. In North Korea education was expanded largely due to State funding. But in South Korea education was expanded with resources coming mostly from parents. In South Korea the expansion took place in phases. From 1955 to 1970 there was an emphasis on expansion of primary schools. After 1965 the emphasis was on expanding junior and senior secondary schools. It spends only 19% of the budget on education but almost 65% of the total educational costs come from fees. They also have a unique way of enhancing the number of teachers in schools. Males are exempt from military service if they devote two years after graduation teaching at public elementary schools⁵.

As with South Korea, Sri Lanka too emphasizes greatly on education. Unlike the rest of South Asia, Sri Lanka expends 4.5 of the Budget on education with one tenth on primary and secondary school education rather than on universities. From literacy rate of 58% in 1948 it has risen to 86% in 1984⁶. But with economic growth was not commensurate with education and it so happened that it became increasingly difficult for educated youths to be gainfully employed. Thus there developed an inverse relationship between education and unemployment with high unemployment rates among those who were university graduates and lowest level of unemployment among those with a bare primary school education. Nonetheless education did bring down the instances of child labour⁷.

duty bound to provide for education.

⁵ See *Weiner* at p. 171.

⁶ Sri Lanka and Japan are said to have one of the best systems of education. See *Ibid* at p. 172.

⁷ *Ibid* at p. 174

Box V: Excerpts of the Compulsory Primary Education Provisions from the Constitutions of Selected Countries

Particulars	CHINA	CANADA	INDONESIA	ITALY	JAPAN	NETHERLANDS	PHILIPPINES	SINGAPORE	USA	INDIA
International Legal obligation (by ratifying UNCRC)	Ratified on April 1992	Ratified January 1992	Ratified October 1990	Ratified October 1991	Ratified May 1994	Ratified March 1995	Ratified September 1990	Ratified November 1995	Not Ratified	Ratified December 1992
Constitutional Guarantee for free and compulsory education for all children (Fundamental Right)	Guaranteed	Guaranteed	No constitutional Guarantee	Guaranteed	No constitutional Guarantee	Guaranteed	Guaranteed, restricted to citizens	No constitutional Guarantee	No constitutional Guarantee	Process is on
Date of the Constitution Adoption/Entry into force	4 December 1982	Constitution Acts 1867 to 1982, Act Adopted 1982, Consolidated as on 1 April 1999	17 August 1945	22 December 1947	Adopted 3 November 1946, entered into force 3 May 1947	17 February 1983	Adopted 15 October 1986	16 September 1963	Adopted 17 September 1787	26 January 1950
Relevant Provisions on education	Art.19 Art.24 Chapter 2 - The fundamental rights and duties of citizens Art.36 Article 46	Part I - Canadian Charter of rights and freedoms Title 7 - Official languages of Canada Art.16.1 Title 8 - Minority language educational rights Art.23	Chapter XIII- Education Article .31	Part I-Rights and Duties of Private Citizens Title II-Ethical and Social relations Article.33 Article.34	Chapter III - Rights and duties of the people Art.20 Art.23 Art.26	Chapter 1 - Fundamental rights Art.23	Art. II - Declaration of principles and state policies Section 17 Art. XIV - Education, science and technology, arts, culture and sports Education	Part IV - Fundamental liberties Art.16 - Rights in respect of education Part XIII - General provisions Art.152 - Minorities and special position of Malays	The Constitution includes human rights guarantees, but not the right to education.	Part III - Fundamental rights Art.28 Art.29 Art.30 Part IV- Directive principles of state policy Art.41

							Section 1			Art.45
							Section 2			Art.46
							Section 3			Part XVII - Official language
							Section 5			
							Language			Chapter IV - Special directives
							Section 6			
							Section 17			Art.350A

Compulsory Primary Education	(19-2) The State runs schools of various types, makes primary education compulsory and universal, develops secondary, vocational and higher education, and promotes pre-school education.	Art. 23 (1) Citizens of Canada (b) Who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,	Article 31 (1) Every Citizen has the right to obtain education (2) The Government shall create and execute a system of National education provided by law	Article 34 (1) Education is available to everyone (2) Elementary Education. imparted for at least eight years, is compulsory and free	Art.26 (1) All people shall have the right to receive an equal education correspondent to their ability, as provided by law. (2) All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for	(1) Education shall be the constant concern of the Government. (2) All persons shall be free to provide education, without prejudice to the authorities' right of supervision and, with regard to forms of education designated by law, its right to examine the competence and moral integrity of teachers, to be regulated by Act	(2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age;	Art.16 (1) (...) There shall be no discrimination against any citizens of Singapore on the grounds only of religion, race, descent or place of birth (a) In the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or		Art.41 Right to work, to education and to public assistance in certain cases. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and
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		<p>have the right to have their children receive primary and secondary school instruction in that language in that province.</p> <p>(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada have the right to have all their children receive primary and secondary school instruction in the same language.</p> <p>(3) The right of citizens of Canada under Subsections (1) and (2) to have their children receive primary and secondary</p>			<p>by law.</p> <p>(3) Such compulsory education shall be free</p>	<p>of Parliament.</p> <p>(3) Education provided by public authorities shall be regulated by Act of Parliament, paying due respect to everyone's religion or belief.</p>	<p>(3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the under-privileged;</p>	<p>students or the payment of fees; or</p> <p>(b) In providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside Singapore).</p>	<p>disablement, and in other cases of undeserved want.</p> <p>Art.45</p> <p>Provision for free and compulsory education for children.</p> <p>The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.</p>
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		<p>school instruction in the language of the English or French linguistic minority population of a province</p> <p>(a) Applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and</p> <p>(b) Includes, where the number of children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds</p>								
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Legally Mandated Length of Compulsory education	9 years	10 years	9 years	8 years	9 years	13 years	6 years	10years	10 years	8 years
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Percentage of Tax revenue spent to meet the human rights obligation which includes free and compulsory education	5.7%	8.6%	15.6%	38.6%	INA	42.7%	17.0%	8.6%	20.4%	8.6%
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Public Expenditure on Education in relation to GNP	2 to 3%	More than 7%	INA	6 to 7%	3 to 4%	5 to 6%	3 to 4%	3 to 4%	5 to 6%	3 to 4%
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Section –V

Conclusion

It is assumed that implementing education, as a fundamental right is the best possible course of action. This pre-supposes two things. One that education is so important that it ought to be a fundamental right. And second, that education can only be effective if it is implemented as a fundamental right. Below is a debate on the issue that goes to the very heart of the matter: whether education should be a fundamental right at all? Following is the debate on the above issue. To enable a proper understanding of the debate, the narrative takes the form of a dialogue with the “pros” and “cons” discussed in a flow in order to attempt to arrive at a clear consensus.

To some education is an essential step towards the development of a person. To others it means that people can participate in the governance of the State, are empowered and are well informed to make choices for themselves. And still to most, education is the ticket to a job.

If people’s reasons for education are so diverse, then why is it that most often people are unanimous in their support for education? The answer lies in the fact that education fulfills all of the above functions. Therefore it is so fundamental and so basic to personal development that everyone should be entitled to it.

On the other hand there are others who say that the benefits of education are too idealized. No doubt education has its own advantageous but education in isolation is quite worthless. What forms the content of education is far more important than some general and isolated reading material. To them, if one were to look at the appalling state of our country today, what would strike us first would be the abject poverty, homelessness and hunger prevalent in most regions of the nation. When people do not have a roof over their heads or a decent meal through the day, what are people like this going to do with education? While food, health and shelter have not been granted explicitly as fundamental rights, is the inclusion of education as a fundamental right justified. There is concern over the diversion of our resources on education when instead they can be utilized on eradicating poverty, hunger and homelessness.

The above approach rests on the premise that poverty should be tackled prior to making any commitments on education. At this stage it is important to realize that poverty cannot be tackled in isolation. Poverty is the result of many inter-related socio-economic factors.

Fundamentally it is important to consider the cause of poverty. Why are people poor? In economic terms, people are poor because they are not getting absorbed into the work force. For instance let us take the case of a child labourer. The child is initially put through work because the family needs the extra income. The child works from a young age regularly bringing in income but not doing anything else. Conditions of labour are so pathetic that the child also becomes physically weak. By the time the child is a major, it has neither the

qualification to get a better job nor is it physically possible to train in something else. For a child labourer it will rarely be possible to earn anything substantially more than what it was earning for a noticeable change in lifestyle. Therefore the cycle continues. Thus child labour is not only caused by poverty but is also in itself a cause of poverty. Similarly poverty breeds poverty and will continue to breed poverty unless there is an intervention. This intervention is education.

Education is supposed to help people rise in the social order and to become more empowered. But formal education as it is does none of it. In fact for rural children formal education does not even pertain to their life situations. It is so far removed from their reality that it serves no purpose. These children should instead be taught to develop skills because they will need to use those in the future rather than some bookish education. With a bookish education they even risk losing those jobs that they would normally get.

It is true that the content of education needs more improvement and refinement. But does a lack of it justify a shift in the focus of education specifically for rural children. When we say that, are we not implicitly stating that rural or poor children deserve to work, use their hands rather than engage in intellectual pursuits? Are we not in effect creating social structures, even if unconsciously, that would prevent these children and their families from any kind of upward mobility?

But realistically speaking providing formal education is not going to make doctors or engineers out of all them? Instead it might create a class of disgruntled and cynical youth who are unable to get jobs of their choice. Instead if they are taught from young age to engage in some work, they might have a better sense of their reality instead of hoping for the stars and achieving absolutely nothing.

Firstly, we are underestimating the capacity of children. They may not become doctors and engineers but an education will open up new avenue for them, avenues not available to their parents and these avenues need not necessarily be finding jobs in the city. Most importantly we aren't even allowing them to dream and to pursue. Secondly, there is a strongly held notion that the sole purpose of education is to seek a job. In India we do not recognize education as an equalizer, as an instrument for developing shared attitudes and social characteristics, but rather as a way of differentiating one class from another¹. Education is regarded as a form of social superiority, which is why it is used to keep disadvantaged people in the same economic and social position for generations together.

There is a general consensus about the priority of education and it cannot be debated that a country can progress without the education of its masses. However, there is variance of opinion on the issue of whether articulating education, as a fundamental right is the most

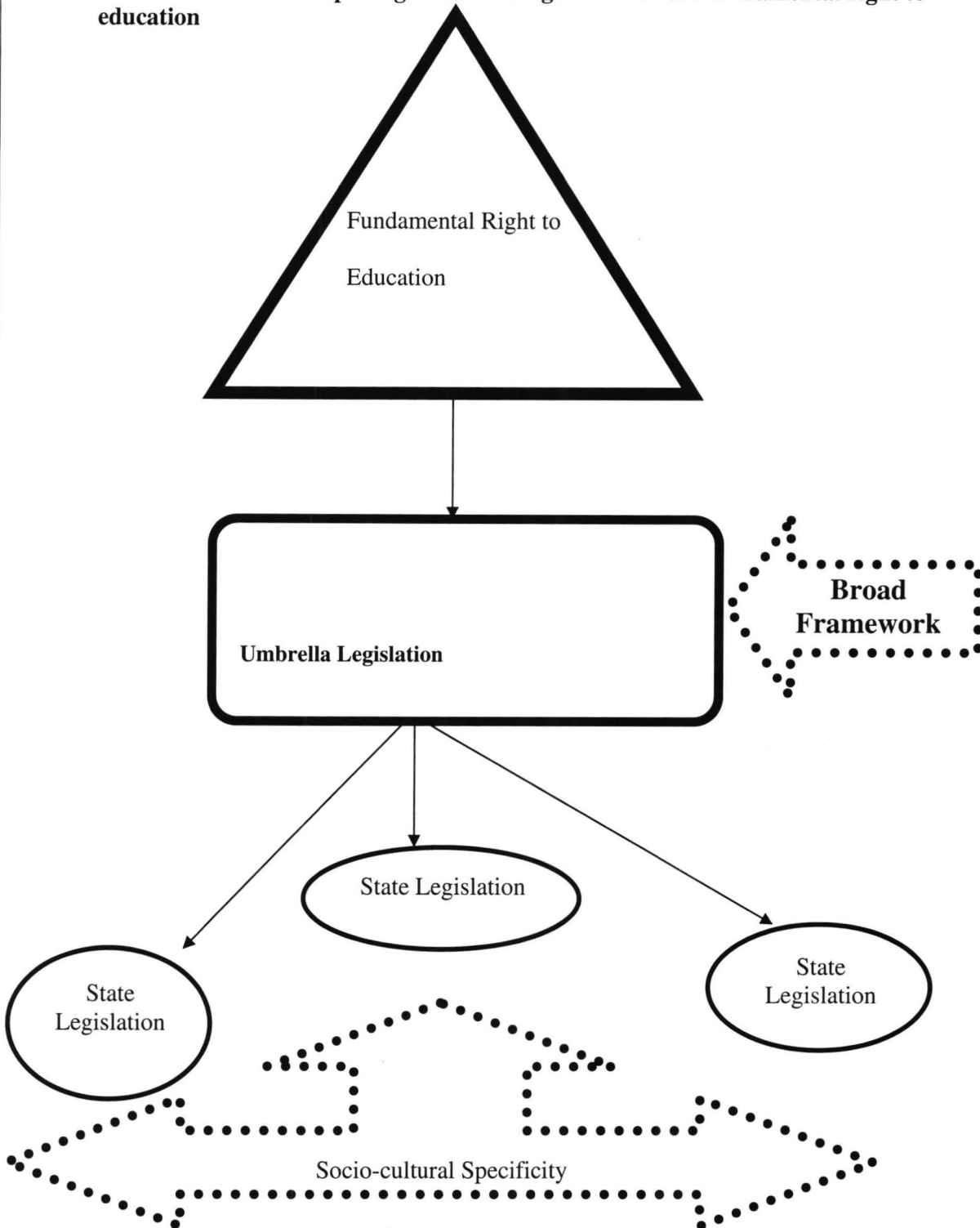
¹ See *Weiner* at p. 190.

effective way of bringing about changes in the system of education. While proponents of the fundamental rights approach argue that unless a concrete framework of law is laid down, the effectuation of the right will be practically impossible. On the other hand, critics of the approach are of the opinion that in light of the fact that the right to education has been read into Article 21 a reintroduction of the same in a separate article is a redundant concept and will not achieve any functional results.

The first step towards finding a solution is to accept that there exists a problem. The second step entails a sincere effort in the direction of finding a solution. It will be difficult to find proponents who argue that all is well with education in India – at least we accept that there is a problem at hand that requires a solution. The difficult question, however, is about the methods of finding the solution. There have been various comprehensive research efforts detailing the problems that plague education and making suggestions to overcome the problems. What is disappointing is that the problem still plagues us. India is still in the latter half of the human development ladder. There is no sincere effort to find a solution. Such a sorry state of affairs is not surprising because the policy makers themselves do not care much about education. The elected legislators of the land are not required to be educated under the law. Moreover, education is an effective weapon of politics in their hands. Anyone who has been awake to the Mandal Report issue will easily agree.

We consider this a fortunate phase of time. There is discussion about education being enumerated as a fundamental right. The highest court of the land has set the ball rolling. Of course there has been inexplicable political lethargy, but there is hope that the snail will eventually cross the finish line. And in the hope that the people of India will awaken to the day when the State guarantees a fundamental right to education the researchers undertook this research paper to hesitatingly make a humble effort to study the strategies to effectively implement such a right. It is a very colossal task especially when what one sees from the confines of law school is so different from what reality actually means. For instance, the researchers were of the initial simplistic opinion that the obvious reasons why parents do not send children to school are associated with poverty. It was truly an eye opener to find out there exist parents who have the wisdom to understand the importance of education and definitely want their children to receive an education. However, the same parents would only send their children to school if the school offers a certain quality of education. We propose the following system, depicted with the help of a flowchart, in order to legislate on the fundamental right to education.

Box-IV: Flow chart depicting umbrella Legislation on the fundamental right to education



The researchers propose that an umbrella Central law be legislated deriving authority from the fundamental right to education. The Central law should undertake the task of providing a framework for the States to follow within which to make their State laws. The advantage of the setup is that while the Central law will ensure a degree of uniformity in the implementation of the right to education, the state laws will have the responsibility of addressing the socio-cultural aspects of education unique to that State. A structure that gives the States autonomy to evolve policies specific to their situations will travel a long distance in alleviating the discontent about not having the prerogative to legislate on education since it falls under the concurrent list of the Constitution. In fact, the Ashok Mitra committee in West Bengal had drawn parallels with the breaking up of the erstwhile USSR in order to demonstrate the ills of over centralization. That the comparison tends to be radical does not take away from the reality which points to the fact that the States need more freedom to evolve their own systems in order to fulfill specific requirements.

Broad framework to be laid down by the Central legislation will take note of the under mentioned aspects.

Education in the Concurrent

Education is in the concurrent list that is the list of subjects in the Constitution of India on which both the Centre and the State governments can legislate. In our opinion providing school education is more a State responsibility. It implies that the states should be given an opportunity to plan school education according to the needs and priorities of the State. How do we provide space for the States in the Central legislation is an issue for consideration.

The financial aspects of education:

As has been noticed that the spending on education suffers on, both the national and the State levels. The desired financing of 6 percent of the GNP² has not been met and the States also have demonstrated lack of uniformity in financing education. There are glaring disparities in the allocation towards education among the States. The example of Kerala making progressive allocation, on the one hand, and Uttar Pradesh just a ripple in the ocean comes to mind instantly. The umbrella legislation should lay down a minimum allocation of resources for both the Center and the States. For instance, it can be stated that the Center and the States, in their respective State budgets, shall allocate a minimum of 6 percent of the GDP (in the case of States the State GDP) towards education. This is only a minimum mandatory level; the States will have the freedom to allocate more depending on their economic situation.

² The Education Commission (Kothari Commission) 1964-66 had recommended to spend 6 percent of GNP on education

Community recognition:

The researchers learnt that community participation is a very important for supplanting the initiatives taken by the States and more importantly in maintaining the quality of education. Initiatives in community participation also act as agents to change mindsets of people towards. The Central legislation should recognize community participation as an important component of the right to education. The States in turn can evolve their specific policies in this regard. It is observed that NGOs play an important role in promoting community participation. The law should help NGOs in their pursuit. A system of regulation and control may very easily slide into degeneration and may harm the pains taking work carried on by these organizations. In this regard the State should assume the role of a facilitator and not venture into the realm of controlling and regulating.

Emphasis on child autonomy:

The Convention on the rights of the child, it is often argued, is based on the theme of the autonomy of the child. The children should have right in order to decide upon at least a part of the sphere of education. How do we ensure children's right to participation and decision making in the arena of education is the another question before the law makers.

All our discussion pertaining to legislation on right to education so far pushed us to prepare a schematic outline on various chapters in the proposed Central legislation. This is an incomplete work but still we want bring it here for one simple reason that to get people's response to take it forward. Our experienced in the past revealed that People's response in the absence of a written document is always shabby and inconsistent. This alone motivated us to propose the following scheme for proposed central legislation.

Chapter one

Short title extent-commencement

This act may be called Right to Education Act or School Education of Equitable quality Act. Applicable to whole of India and will come into force immediately after notification. Some important words that need to be defined are Child, access, school, education of equitable quality, free, learning guarantee, teacher, teacher competency, teaching work, Minimum Levels of Learning, Learning days, Parents participation, Community participation etc.

Chapter two

Classification of institutions

Classification of educational institutions may be good way to begin. There are State run and maintained institutions, Institutions run by private bodies with state aid and institutions run by private agencies without any aid but with due recognition by the State. In addition to these

institutions there also exist institutions, which are recognized Central Board For Secondary Education (CBSE) and the Indian Council for Secondary Education (ICSE) schools. The State is also running some Residential schools and Hostels for disadvantaged group

The number of schools run by the state is phenomenal. At the elementary education level it is almost 90-97 percent of the total schools in the rural area. The percentage of private institution increases towards secondary and higher education levels.. The second set of institutions providing school educations are the institutions receiving grants from the government .The third category considerably small and confined to semi urban and urban areas are private English medium schools, which are recognized by the state.

Our focus to bring change in governance, administration and monitoring should be on state run and state aided institutions to impart school education rather than unaided private institutions. In relation to private unaided institution the role of the State may be are control and regulation. Such control should be through enabling standards that do not allow a role for inspector Raj. The State must clarify what role it derives to plan with regard to each category of school.

Chapter three

Access – Enrolment retention (Government and aided institution)

Currently access is provided within the radius of one kilometer in case of Lower Primary School (LPS) .In case of LPS access should be within the habitation except in extreme cases where the number of children are less than 10, Even in such cases suitable transportation should be provided to children to attend a nearby school. At the Higher primary Level (HPS) access should be based on the feeding zone concept or a particular geographical area.

Minimum /adequate facilities should be provided at all levels of schooling. We have to define the minute details of all these facilities at each level. At LPS a structure, which could facilitate Multi grade teaching with separate space for each class, should be thought of with minimum teachers. At the HPS one room for every class and one teacher for every class should be the minimum criteria under the law.

All children in the prescribed age group is our target group. Enrolment should be all-inclusive. Different packages for non-school going children, dropouts and children with special needs should be provided. Within the dropout category there are different groups like Child labour, neglected children, street children, children in conflict with the law, migrant children etc who need special attention and specified measures.

While addressing the issue of retention a more coherent and convergent policy is the need of the hour .It is important to bring linkages with various other departments directly working on

the issues related children .The Department of education, Social Welfare, Women and Child Development and Labour department must come together to achieve maximum convergence. The education department may be designated the lead department for initiating the process.

The department of education should also work closely with the department of disability to cater to the need of special children. Special measures should be taken to protect the interest of children in the State institutions under juvenile justice.

Chapter four

Learning guarantee and equitable quality

A mechanism to ensure learning guarantee for all children on the lines of MLL is an important issue related to quality education .We need to define the concept of equitable quality in education and the means of achieving it. Quality of school education also depends upon the contents of education. In the prevailing system of education a lot of disparity in terms of contents taught in different streams are visible .The present analysis says that that the ICSE stream is of high standard and comprehensive. Next to ICSE is the CBSE that is followed in all Central schools .The third and the most inadequate substandard is the state syllabus followed by the state governments. The ability of children who studies in the ICSE, CBSE and private English medium school is far superior to the ability of children who study in government and government aided school .How to fill this gap n order to achieve equity and equality in school education. Does the department of elementary education have any proposal?

Chapter five

Community participation

The missing link in the present school education system is community participation. Many successful experiments indicated that parents of the school going children and the community in the locality of the school could make a big difference to school education. Proper measures need to be evolved to ensure community participation at different levels of school education. We have to maximize the potentials of these people to strengthen the school education in all respects and work should be assigned accordingly.

Chapter six

Administration –Monitoring coordination of school education

The professionalism, work culture, transparency and accountability of the system depends upon the structure of administration, monitoring and coordination in school education .The

roles and responsibilities vary at different levels of school education. If we draw a pyramid to understand the roles and responsibilities of school education, school forms the base of the pyramid. All interventions that we are talking in terms of access, enrollment, retention and equitable quality are concentrated at this level. In addition the functioning of schools, teachers ability to teach, methods of training, accountability and transparency are all vital issues at the school level. Another important issue at this level is the issue of community participation. Planning, execution, administration monitoring, assessment and reporting should be made an integral part of school functioning.

Administration and monitoring of the academic activities with suitable coordination mechanism is the responsibility of other structures in the hierarchy. When we move towards the top of the pyramid the roles and responsibilities in relation to access, enrollment, retention and equitable quality decreases and where as the responsibility of providing academic leadership in terms of well defined policies, academic excellence and standards, commitment to provide adequate facilities and above all financial requirements will become the responsibility of people who occupy the higher/apex levels of the pyramid.

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